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Rough Draft

Appropriations Committee  
March 10, 2011

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[AGENCY 10]

SENATOR HEIDEMANN: Is anyone else wishing to testify on Agency 9? Seeing none, we will close the public hearing on Agency 9 and open up the public hearing on Agency 10, the State Auditor. [AGENCY 9]

MIKE FOLEY: (Exhibit 2) Thank you, Mr. Chairman, members of the committee. For the record, my name is Mike Foley, that's spelled Foley, F-o-l-e-y, Mike in the usual way. My presentation today will be relatively brief because I recognize that there's been no turnover on the Appropriations Committee from the last biennium. You're already well-familiar with the functions of my office. I would like to offer some comments and perhaps a recommendation on your preliminary budget recommendation as it affects my office. As you know, your preliminary recommendation recommends an 8.3 percent reduction in General Funds for the ensuing fiscal year. In my case, that 8.3 percent translates into roughly \$195,000 reductions in General Funds. As you well know, such a cut of 8.3 percent can have quite a different impact on various agencies, depending on how much General Funds they actually receive and so forth for many other factors as well. The top page of my handout is a table taken from the 2010 Nebraska State Government Almanac that shows the percentage of each agency's expenditures devoted to personnel-related expenses and, as you can see, the State Auditor's Office ranks number one in terms of the percentage of my annual expenditures devoted to personnel. I'm not at all surprised by that ranking because my staff and I have long ago cut out all of our outside contractors, all of our out-of-state travel. The computer on my desk is seven years old. That's not unusual for my office. We've cut everything pretty much to the bone and essentially all that remains now is personnel. So a \$195,000 cut in General Fund appropriation really translates into about four positions in my office. Currently, I've got one vacancy. Obviously, I'm not going to fill that. So your proposal will affect the employment of three auditors in my office, three highly trained individuals who I think are doing a marvelous job for the state, and their positions will be eliminated effective July 1. That's an absolute certainty. There's no way I can get around that.

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There's no way I can find \$195,000 in savings in other expenses. They're just not there. I'm very proud of my staff. They're highly educated. They're well-trained. They do a great job for the state of Nebraska. To terminate three auditors at this time I think is going to do great damage to the functioning of my office. My office, I believe, pays for itself in the savings that we realize as we conduct our work and I think this is a public policy mistake that can be avoided. Fewer auditors on the scene watching over the billions in state and federal funds flowing through our accounting system simply means less oversight, more problems left to fester and grow, more embezzlements left uncovered, and more financial improprieties left unaddressed. I'd ask you to give reasonable consideration to a proposal I'm going to put before you to save those three positions, while at the same time respecting your need to cut General Fund appropriations. Unlike prior biennial budget proposal, your current proposal treats my cash funds quite differently. My cash fund represents monies reimbursed to my agency for audits I've already performed. We've completed those audits, we've paid the personnel, we've incurred the expenses, and we've been reimbursed with the funds going into my cash account. In prior bienniums, all of the cash authority carried over from one biennium to the next. In this case, though, the proposal lapses about \$300,000 of cash authority. I'm simply asking that you restore roughly \$180,000 in the cash authority and the corresponding PSL. The net effect of this action would be to preserve your cut of \$195,000--I realize you must make those kinds of cuts in General Fund appropriation--but at the same time, by allowing you to balance the budget, provides me with the resources that I need to conduct my work. This proposal respects your need to reduce General Fund appropriations but accomplishes your goals without inflicting undue damage on my office. And page 2 of the handout has the specific numbers that I'm referring to. Also in my handout is just a quick couple of snapshots of where we are with this health insurance issue. As you can see, there are four major programs in the state and the state agencies plan is the most expensive. I want to just point out to you one little interesting fact about this high-cost state plan. This is not the plan negotiated by NAPE, the employees' union. The employees' union plan is significantly less costly than the DAS plan, significantly less costly, but most employees don't take it. They take

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the higher-cost plan. This is quite a dilemma for the state. It causes a great deal of expense to the state. This problem really does need to be addressed and this is the kind of problem that we can address because we've got the personnel with the skills and the talents to dig into questions like this, and there's enormous savings potential here that I think we can realize. Thank you for your time and be pleased to take your questions.  
[AGENCY 10]

SENATOR HEIDEMANN: Senator Conrad. [AGENCY 10]

SENATOR CONRAD: Thank you for coming in, Auditor, and I appreciate this information and I also appreciate you including some information related to an issue that's been in the news recently in your audit, at least in part, of health insurance plans for different entities of state government. And I saw it was picked up by a national source, I don't remember if it was MSNBC or CNBC, but there was a direct quote in there that you noted that you felt that those at the highest level of government, the Attorney General's Office and the Governor's Office, had frustrated or hindered your audit. Could you elaborate on that or what that means? [AGENCY 10]

MIKE FOLEY: Well, I don't think that's an accurate quote. That's not an accurate quote.  
[AGENCY 10]

SENATOR CONRAD: Okay. [AGENCY 10]

MIKE FOLEY: What I did say, and I pointed out to the press was something that they already knew, which has been there's been a longstanding disagreement between my office and the Governor's Office regarding access to certain records. As you can appreciate, some of the records that we're talking about here are indeed sensitive records but they are not the employees' health records. The employees' health records are at their doctors' offices. We're not going there. We don't need those records. What we need is the billings from the doctor's office to the state. Why do we need those?

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Because we pay them. This is not private insurance. This is a self-insurance model and that's why we need those billings. Take the names off if you need to. I've said that over and over again. I don't need to know who had gallbladder surgery last week. That's not important. What is important is did we pay the right amount of money for that procedure and did we pay it more than once? I think there are some problems there that we can expose and get addressed. [AGENCY 10]

SENATOR CONRAD: And then as one of the results of that investigation or at least what I read in media reports this week, I guess there's a plan that exists now that your office, is that right, or the Treasurer's Office will kind of act as a receiver for that State Troopers plan until things can be worked out? Is that right? [AGENCY 10]

MIKE FOLEY: The key recommendation of yesterday's report was that the funds should always have been under the control of the State Treasurer and the State Treasurer has now exercised its authority to do just that. [AGENCY 10]

SENATOR CONRAD: Okay. Thank you for clarifying that because I wanted to talk about agency staffing and ability to handle that. [AGENCY 10]

MIKE FOLEY: Sure. [AGENCY 10]

SENATOR CONRAD: But I'll take that up with the Treasurer. Thank you. [AGENCY 10]

MIKE FOLEY: Okay. Very good. [AGENCY 10]

SENATOR HEIDEMANN: Senator Fulton. [AGENCY 10]

SENATOR FULTON: Thank you, Mr. Chairman. Thank you for being here, Mr. State Auditor. These, the positions that you're looking at potentially cutting, you're convinced that they have to be auditor positions? [AGENCY 10]

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MIKE FOLEY: Absolutely. [AGENCY 10]

SENATOR FULTON: Is there any... [AGENCY 10]

MIKE FOLEY: I've got a couple of administrative positions but they are fully occupied and very much needed in my office. [AGENCY 10]

SENATOR FULTON: Yeah, that's the next question I'm getting to, is so in the entirety of your office, the administrative positions you have available to you... [AGENCY 10]

MIKE FOLEY: Are 2.5 positions. [AGENCY 10]

SENATOR FULTON: Okay. [AGENCY 10]

MIKE FOLEY: Out of a staff of 40 or 41, 2.5 positions are administrative, all the rest are auditors, so that's the only place I can go to get \$195,000 in savings, is 3 positions. [AGENCY 10]

SENATOR FULTON: Okay. [AGENCY 10]

MIKE FOLEY: And I think it can all be avoided by a simple change in how we treat the cash funds. [AGENCY 10]

SENATOR FULTON: Okay. All right. Thank you. [AGENCY 10]

SENATOR HEIDEMANN: Senator Nelson. [AGENCY 10]

SENATOR NELSON: Thank you, Senator, and thank you, Auditor Foley. By increasing the amount of cash funds then would you take that money for nonpersonnel expenses,

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is that what you would do, or would you apply these cash funds... [AGENCY 10]

MIKE FOLEY: Well, the way...my agency is basically two-thirds General Funds, one-third cash funds. The cash funds come from reimbursements. When I audit federal fund programs, the federal government provides funds to those agencies for audit purposes, then they reimburse my agency for those expenses. So they become cash funds, as I receive them. Also, as I audit political subdivisions, and we do a lot of that because there are incredible problems out in the political subdivisions that we must address every day, under statute the political subdivisions pay for the costs of their audits. [AGENCY 10]

SENATOR NELSON: I understand. That's where the... [AGENCY 10]

MIKE FOLEY: So, basically, to answer... [AGENCY 10]

SENATOR NELSON: That's where the money is coming from. [AGENCY 10]

MIKE FOLEY: Yes. It covers personnel. [AGENCY 10]

SENATOR NELSON: But you want to avoid reducing by 2.5 or 3 FTEs, so how are they going to get paid, you know, if you can't do it out of General Funds? [AGENCY 10]

MIKE FOLEY: Oh, well, we'd pay them with cash funds. [AGENCY 10]

SENATOR NELSON: Okay. [AGENCY 10]

MIKE FOLEY: Yeah. [AGENCY 10]

SENATOR NELSON: That was my question. [AGENCY 10]

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MIKE FOLEY: Yeah. [AGENCY 10]

SENATOR NELSON: You can use the cash funds (inaudible). [AGENCY 10]

MIKE FOLEY: We can, yes. Yes. Yes. [AGENCY 10]

SENATOR NELSON: Are you doing that now for any? [AGENCY 10]

MIKE FOLEY: Yes, we are. [AGENCY 10]

SENATOR NELSON: Oh, you are. [AGENCY 10]

MIKE FOLEY: Yes. [AGENCY 10]

SENATOR NELSON: Okay. To quite an extent then? [AGENCY 10]

MIKE FOLEY: About roughly one-third of the budget, yeah. [AGENCY 10]

SENATOR NELSON: About one-third are by cash funds. [AGENCY 10]

MIKE FOLEY: Yeah. [AGENCY 10]

SENATOR NELSON: Okay. Thank you. [AGENCY 10]

SENATOR HEIDEMANN: Any other questions? Seeing none, thank you. [AGENCY 10]

MIKE FOLEY: Thank you. [AGENCY 10]

SENATOR HEIDEMANN: Is anyone else wishing to testify on Agency 10? Seeing none, we will close the public hearing on Agency 10 and open up the public hearing on

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Agency 11, the Attorney General. Welcome. [AGENCY 10]